IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

Crl.Rev.Pet.No. 4038 of 2006(D)

CRA.598/2005 of II ADDL. SESSIONS COURT, PALAKKAD
ST.432/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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REVN. PETITIONER: APPELLANT/ACCUSED

M.NASAR, S/O.MUHAMMED,
AGED 40 YEARS, PROPRIETOR, NEW BANU ENGINEERING
WORKS, PUTHUPPALLI JUNCTION, NOORANI,
PALAKKAD.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: COMPLAINANT AND STATE

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1. YOOSUF SIDHIQUE, S/O.KADER,
THAZHATHETHILVEEDU, VADANAMKURISI AMSOM DESOM,
OTTAPALAM.

2. THE STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.KAMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.R.P.No.4038 of 2006

Dated this the 9th day of January 2007

O R D E R

The petitioner is aggrieved by the concurrent verdict of guilty, conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act.

2. The cheque is for an amount of Rs.55,000/- and bears the date 20/12/2003. The complainant examined his power of attorney holder as PW1 and proved Exts.P1 to P4. The defence did not adduce any evidence. Notice of demand though duly received and acknowledged did not evoke any response.

3. The courts below concurrently came to the conclusion that the complainant has succeeded in establishing all the ingredients of the offence punishable under Section 138 of the N.I Act. Accordingly they proceeded to pass the impugned concurrent judgments.

4. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner only prays that leniency may be shown on the question of sentence. The petitioner now faces a sentence of S.I for a period

of three months and to pay the actual cheque amount of Rs.55,000/- as compensation and in default to undergo S.I for a further period of one month.

5. I have already adverted to the principles governing imposition of sentence in a prosecution under Section 138 of the N.I.Act in the decision reported in **Anilkumar vs.Shammi** [2002 (3)KLT 852]. In the facts and circumstances of the case, I find no compelling reasons which can persuade this court to insist on imposition of any deterrent substantive sentence of imprisonment. Leniency can be shown to the petitioner but subject only to the compulsion of adequately and fairly compensating the victim who has by now been compelled to fight two rounds of legal battle and to wait from 2003 for the redressal of his grievances. The challenge can succeed only to the above extent.

6. Notice issued to the complainant has not returned after service. In the circumstances of this case, I am satisfied that it is not necessary to wait for issue and return of notice to the respondent.

7. This revision petition has been taken up for hearing at the instance of the petitioner straight away.

8. In the result:

a) This revision petition is allowed in part.

b) The impugned verdict of guilty and conviction of the petitioner under Section 138 of the N.I.Act are upheld.

c) But the sentence imposed is modified and reduced. In supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo imprisonment till rising of court. He is further directed under Section 357(3) Cr.P.C to pay an amount of Rs.65,000/- (Rupees sixty five thousand only) as compensation and in default, to undergo S.I for a period of two months. If realised, the entire amount shall be released to the complainant as compensation.

9. The petitioner shall have time till 09/03/2007 to appear before the learned Magistrate to serve the modified sentence hereby imposed. The impugned sentence shall not be executed till that date. If the petitioner does not appear before the learned Magistrate as directed, the learned Magistrate shall thereafter proceed to execute the modified sentence hereby imposed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006